



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: AMKO Construction Co., Inc.
File: B-234309.2
Date: July 12, 1989

DIGEST

Bidder's failure to include certification that it was a licensed applicator of a roofing system manufacturer does not render the bid nonresponsive where the bidder did not otherwise take exception to any of the solicitation's requirements. The certification concerns the bidder's ability to provide a roofing system meeting the specifications and, as a matter of responsibility, may be provided any time before award.

DECISION

AMKO Construction Co., Inc., protests the proposed award of a contract to MZP, Inc., under invitation for bids (IFB) No. N62474-87-B-2144, for roof repair at the Naval Supply Center, Oakland, California. AMKO contends that MZP's bid is nonresponsive to the IFB.

We deny the protest.

Amendment No. 0002 to the IFB required bidders, if they were not certified to perform a Built-Up-Roofing System, to provide certification from the roof manufacturer that they were "licensed applicators" of the manufacturer's roofing system and capable of obtaining the manufacturer's 5-year labor and materials warranty. At bid opening, although MZP was the apparent low bidder and had acknowledged all amendments, it failed to provide the above certification. The contracting officer determined that MZP's failure to include the certification was a matter of responsibility, not affecting the responsiveness of the bid, and allowed MZP to furnish the required certification after bid opening.

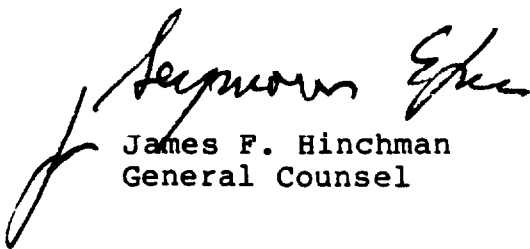
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AMKO contends that the fact that MZP did not include the certification with its initial bid made the bid nonresponsive. However, as the Navy reports, the purpose of the certification requirement was to enable the Navy to determine whether the bidder would be able to repair the roof according to a specified roofing system and obtain a 5-year warranty, i.e., whether the bidder was capable of meeting the IFB's requirements.

Regarding this same requirement, we have held that the certification involves a matter of responsibility because it relates to the bidder's ability and how it intends to perform the contract and not to the bidder's legal obligation to provide the warranty. See Western Roofing Service, B-234314.2, May 22, 1989, 89-1 CPD ¶ 486. Responsiveness concerns whether a bidder has unequivocally offered to provide the supplies or services in conformity with all material terms and conditions of the solicitation while responsibility refers to a bidder's apparent ability and capacity to perform. Western Roofing Service, B-234314.2, supra.

Since there is no evidence in the record that MZP took exception to the warranty requirements or any other IFB requirements, we find that MZP's failure to furnish the certification required by amendment No. 0002 until after opening did not affect the responsiveness of its bid. The certification requirement was a matter of bidder responsibility and the contracting officer properly permitted MZP to submit this information after bid opening, since it properly could be supplied any time before award of the contract. See Norfolk Dredging Co., B-229572.2, Jan. 22, 1988, 88-1 CPD ¶ 62.

The protest is denied.



James F. Hinchman
General Counsel